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Special Civil Application Nos.5284 to 5305 of 1995

Date of Decision: 7-7-95

For Approval and Signature:

HONOURABLE MR. JUSTICE M.R. CALLA

1. Whether Reporters of Local Papers may be allowed to see the judgment? YES
2. To be referred to the Reporter or not? YES
3. Whether Their Lordships wish to see the fair copy of the judgment? NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other order made thereunder? NO
5. Whether it is to be circulated to the Civil Judge? NO

Mr.Y.N.Oza, learned counsel for the petitioners.

Ms.S.K.Mandavia, learned A.G.P. for the respondents.

Coram: (M.R. Calla, J.)

Dt: 7-7-95

COMMON JUDGMENT

1. This group of 22 Special Civil Applications is

directed against the suspension of 22 employees who were working in Narmada and Water Resources Department in the Panam Irrigation Project. The petitioners herein hold the posts of Assistant Engineer, Additional Assistant Engineer, Overseer and Deputy Executive Engineer. All these petitioners have been placed under suspension by the orders passed on 30.6.1995 issued under the signatures of the Under Secretary to the Government in Narmada and Water Resources Department. The suspension orders had been passed on 30.6.1995 but no copy of order had been placed on record while filing the Special Civil Applications on 1.7.1995 on the ground that the orders had not been served upon the petitioners but it has been disputed by the learned Assistant Government Pleader, and according to the respondents they had been served on 30.6.1995 itself by pasting/affixing the suspension orders at the residence of the respective petitioners. The learned Counsel for the petitioners was therefore called upon to place the suspension orders on record and the suspension order as has been passed and produced before this court today by the learned counsel for the petitioners is reproduced as under:

When the matter came up before this Court on

3.7.1995 Miss S.K. Mandavia, learned A.G.P. appeared on behalf of the respondents and submitted that she had entered into caveat in this matter on behalf of the respondents. On the request of both the sides the matter was directed to be listed on 4.7.1995 for final disposal at admission stage. An affidavit in reply dated 4.7.1995 was filed on behalf of the respondents and the learned counsel for the petitioners moved an amendment which was granted on 5.7.1995. Thereafter, a further affidavit dated 6.7.1995 was filed by the Under Secretary through Babubhai L. Parmar working in Narmada and Water Resources Department. Rule was issued on 6.7.1995, service was waived by A.G.P. and the matters were heard. The learned A.G.P. has placed for the perusal of the court a note recorded by the Minister concerned. It appears from the record produced before the Court that the Minister for Narmada Development Water Resources and Water Supply recorded the above referred note on 14.6.1995 that there were serious irregularities in the maintenance of repair works of Panam Project and he had asked the Chief Engineer and the Joint Secretary to investigate the same. It is also recorded in this note that the Officers of quality control had demanded the necessary records from the concerned officers but the same were not produced and therefore, the investigation of the serious irregularities and lapses in the maintenance and repair works of Panam Project was obstructed and this itself was a very serious matter. On this basis action was required to be taken against all concerned employees and officers. The employees and the Officers of the Quality Control Department would therefore take up the investigation from 15.6.1995 and therefore all the employees and officers who were having relevant records may produce the same so that there is no impediment in the investigation of the irregularities and lapses in the maintenance and repair works of Panam Project. The records were to be produced at the Head Office, Godhra and all concerned may be informed accordingly. The matter may be taken up seriously and strict compliance may be made. Thereupon on 16.6.1995 the Joint Secretary, Narmada and Water Resources Department sent a letter to the Superintendent Engineer, Panam Project, Godhra in the matter of production of the original record for the investigation of the works relating to Panam Irrigation Project. This letter shows that investigation work was to be made with regard to the works of the Panam Irrigation Project, Panchmahal District, Panam Irrigation Department, Godhra, for the period January 1995 to May 1995 and for that purpose the Chief Engineer, Quality Control and the Joint Secretary had required the production of the original record before

the Executive Engineer, Quality Control. The Executive Engineer, Quality Control, Ahmedabad visited Godhra and made a demand for the production of the records on 8,9, 10/6/1995 from the Executive Engineer, Panam Irrigation Project, Godhra. Despite this, the concerned Executive Engineer did not produce the record. The Chief Engineer, Quality Control and the Joint Secretary therefore impressed upon the Superintending Engineer that despite demand the records had not been produced and why the matters are delayed and further that he may report immediately as to who were the officers and the employees posted on the Election Duty, and from which date to which date. On the same day i.e. 16.6.1995 the Executive Engineer, Quality Control, sent a letter dated 16.6.1995 to the Chief Engineer, Quality Control and the Joint Secretary, Narmada and Water Resources Department mentioning that the records had not been made available to him and the Executive Engineer, Godhra be asked to make the records available for the investigation so that the matters may be investigated before the commencement of rains and the report be also made with regard to the answerable officers. It appears that on 27.6.1995 the Executive Engineer, Panam Irrigation Project , Godhra sent a letter to the Chief Engineer, Quality Control in which certain letters written by him have been detailed and it has been mentioned that in this matter he had written several letters to the Deputy Executive Engineers and yet, the record had not been given to him and all that was available with the Executive Engineer were the muster rolls for the period January 1995 to April 1995 and that the Executive Engineer, Quality Control, Ahmedabad, is informed. Copy of this letter was also sent to the Superintending Engineer, Panam Irrigation Project, Godhra and the Executive Engineer, Quality Control, Ahmedabad. From the details of the letters which have been set out in this letter dated 27.6.1995 it appears that most of the letters have been sent after 15.6.1995. There is an undated note in the record under the signatures of the Under Secretary Shri V.L. Parmar in which it is mentioned on the basis of Executive Engineer, Godhra's letter dated 27.6.1995 that Shri R.D. Patel, Deputy Executive Engineer, Sub Division, Sehra, Shri L.A. Parmar, Deputy Executive Engineer, Morva, Shri D.C. Soni, Deputy Executive Engineer, Sub Division No.2, Veganpur and Shri M.D. Solanki, Deputy Executive Engineer, Sub Division No. 3, Godhra had not produced the records despite the letters sent by the Executive Engineer, Godhra and the investigation therefore could not proceed further and the 22 employees named in this letter were the employees and the officers responsible for the same; the records were not produced deliberately

and the investigation was sought to be forestalled till the commencement of the rains and they had violated Rule (3) of the Gujarat States Service (Conduct) Rules, 1971; therefore, they were liable to be placed under suspension in accordance with the guidelines issued by the General Administration Department on 8.7.1970. This aforesaid undated note prepared by the Under Secretary was signed by the Secretary Water Resources on 25.6.1995 and on the same date it is also signed by the Narmada and Water Resources Minister. Thereafter, the Chief Secretary has recorded his agreement to this note on 29.6.1995 and the note was again signed by the Minister concerned i.e. the Minister for Narmada and Water Resources Department on 29.6.1995 and thereafter the orders have been issued on 30.6.1995 placing 22 employees and officers under suspension. These 22 employees and officers include amongst others four Deputy Executive Engineers who have been named in the note which was prepared by the Under Secretary and the four Dy. Executive Engineers are those to whom letters were sent by the Executive Engineer, Godhra for sending records on various dates and who failed to produce the records.

It was submitted by Mr. Oza, learned Counsel, that it is a case in which the suspension orders of all the 22 employees and officers have been passed in undue and hot haste and without application of mind and it is also his submission that the only misconduct which is attributed against the petitioners is that they failed to produce the records and this by itself cannot constitute such a serious misconduct so as to warrant their removal or dismissal from the service in accordance with the guidelines which have been issued in this regard by the General Administration Department. According to the learned counsel, this type of misconduct cannot be the basis to form an opinion that it warranted their removal from service and therefore the suspension orders cannot be said to be in conformity with the guidelines issued in this regard. The orders have therefore been issued in arbitrary exercise of the power and the suspension orders as also the concerned record do not even show that there is conscious decision by the concerned authorities to hold a regular disciplinary enquiry against any of the petitioners and therefore the suspension orders passed against the petitioners cannot be sustained in the eye of law.

Mr. Oza, learned Advocate, appearing on behalf of the petitioners has placed reliance on an unreported decision of this court in Special Civil Application No. 2402 of 1995 decided on 3.5.1995 and yet another unreported decision in Letters Patent Appeal No. 200 of

1993 in Special Civil Application No. 97 of 1993 with Civil Application No. 905 of 1993 decided on 29.4.1993 by the Division Bench.

It was also submitted by Mr. Oza, learned Advocate, appearing on behalf of the petitioners that the records had been demanded from the Superintending Engineer as well as the Executive Engineer at Godhra and primarily it was the duty of the Executive Engineer, Godhra, to produce the records and yet no action has been taken against Executive Engineer, Godhra and the Officers at lower level i.e Dy. Executive Engineers, Assistant Engineers, Additional Assistant Engineers, Overseers etc. have been made the scapegoat. It has been submitted that it was not verified as to who were the real persons responsible for non production of the records and without ascertaining the reasons for such non production of records and without fixing the liability, all the members of the technical staff have been placed under suspension in an arbitrary and mechanical manner.

Miss S.K. Mandavia, learned A.G.P. appearing on behalf of the respondents has submitted that it was noticed by the concerned Minister that the investigation into serious irregularities and lapses at the Panam Project was required and when the same were sought to be investigated, the impediment was placed in that investigation by non production of the records and therefore on the order of the Minister concerned, when the matter was taken up it was found that the records were not produced before the Quality Control Engineers and non production of such records was only a deliberate device not to allow the reality to come out. The matter was considered as stated in the note which was prepared and submitted by the Under Secretary and on that basis the orders have been issued which cannot be said to be arbitrary nor it can be said in the instant cases that the orders have been passed without application of mind. The note in detail submitted by the Under Secretary wherein a reference has been made to the Executive Engineer, Godhra's letter dated 27.6.1995 shows that despite several letters to the Deputy Executive Engineers of the 4 Sub Divisions they failed to produce the records. It was also submitted by Ms. S.K. Mandavia, learned A.G.P. that this court cannot substitute its own decision for the purpose of considering as to whether the suspension was warranted in the instant cases or not and merely because the factum of contemplation or pendency of the inquiry is not mentioned in the order, the suspension orders do not stand vitiated. It was also submitted by her that no action has been taken against the concerned

Executive Engineer and Superintending Engineer because the Superintending Engineer had written letter to the Executive Engineer, Godhra and the Executive Engineer had sent letters to Deputy Executive Engineers of 4 Sub Divisions and hence the Government did not feel inclined to take action against the Executive Engineer and the Superintending Engineer. Ms. S.K. Mandavia, learned A.G.P. has placed reliance on the decision of the Supreme Court in the case of STATE OF HARYANA VS. HARI RAM YADAV & OTHERS reported in Judgement Today (1994) (1) SC 126 wherein the Court has held that the mere fact that the impugned order of suspension does not contain a recital that the Governor was satisfied that it is either necessary or desirable to place respondent No.1 under suspension does not render the said order invalid.

I have considered the rival submission made on behalf of both the sides and have also perused the relevant records. It is, of course, true that the factum of the contemplation of the enquiry or the proposed enquiry or holding or pending enquiry is not made out explicitly from the order and the records which have been placed for my perusal. Nevertheless it does sound as a cumulative effect of the entire record by construction that the Government may be contemplating some enquiry to be held in this regard. In the note which is prepared by the Under Secretary to which a reference has been made in the earlier part of the judgement it is mentioned at page 2 as under:

A mention has also been made in the order itself that suspension in the instant case was warranted on the basis of the noted misconduct of the petitioners. In this view of the matter, even if it is assumed, that an enquiry may be contemplated with regard to the allegations of the

non-production of records but the fact remains that such decision has to be taken by the concerned authorities in accordance with the Rules. No Government decision as such has been placed on record but it transpires from the records in entirety that the allegation with regard to the non-production of the record is being inquired into because it has impeded investigation with regard to the irregularities in maintenance and repair works of the Panam Irrigation Project. It is certainly not for this court to go into the question of sufficiency of material as to whether the suspension is warranted or not but this court can certainly examine whether the orders have been passed after due application of mind, after following the proper procedure prescribed under the Rules and as to whether the order is arbitrary or not. Rule 5(1) of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971 is reproduced as under:

5. Suspension - (1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered by Government in that behalf may place a Government servant under suspension -
  - a) Where a disciplinary proceeding against him is contemplated or is pending or
  - b) Where a case against him in respect of any criminal offence involving moral turpitude is under investigation, inquiry or trial.

When Rule 3 of the Gujarat Civil Services (Conduct) Rules, 1971 has been violated the Government Servant could be placed under suspension in case of contemplation or pendency of disciplinary proceedings for such violation. Thus the contemplation or pendency of inquiry being a condition precedent and pre-requisite for placing a Government servant under suspension, in normal course, the suspension order itself must at least disclose this fact that disciplinary proceeding was contemplated or was pending so that it can be seen by reading of the order itself that the order has been passed in conformity with the Rules and in case the order by itself does not show that any disciplinary inquiry was contemplated or pending it has to be evidenced by the record. In the instant case, it is not mentioned specifically in the order of suspension that any disciplinary inquiry is contemplated or pending against the petitioners and after going through the record only an impression is created that some inquiry may be under contemplation in the minds of the functionaries. In such peculiar facts and circumstances even if we go with

this assumption in favour of the respondents that some sort of inquiry is being contemplated, the question still remains as to whether the impugned orders of suspension have been passed with due and active application of mind or not. The Court will not go into the sufficiency of the material nor the court may substitute its own satisfaction for the satisfaction of the concerned authorities. Nevertheless it may be examined as to whether the orders have been passed after due and proper application of mind or not.

I have considered the records and have gone through the note recorded by the Minister, the correspondence which was transpired between various officers and the note which was placed by the Under Secretary which forms the basis for passing of the suspension orders. So far as the 4 Deputy Executive Engineers Shri R.D. Patel, Shri L.A. Parmar, Shri D.C. Soni and Shri M.D. Solanki, petitioners are concerned, it appears that what has been taken into consideration against them is the letter dated 27.6.1995 sent by the Executive Engineer, Godhra and since the letters were sent to them by the Executive Engineers not only on 27.6.1995 but prior to that also right from 15.6.1995 and yet the records had not been produced, the respondents do appear to have taken into consideration some material against them in particular by name and so far as other petitioners are concerned, it appears from the note that nothing in particular has been considered against them and orders have straightway been passed against them, may be that they are associated with the technical staff of the 4 Sub Divisions wherefrom the records were required to be produced and the same were not produced. Thus, I find that so far as the petitioners other than 4 Deputy Executive Engineers who have been placed under suspension are concerned, there is total non-application of mind and these 18 employees and officers i.e. Overseers, Assistant Engineers and Additional Assistant Engineers have been placed under suspension only on the ground, as per this note, that they were associated with the 4 Sub Divisions. Therefore, so far as the suspension orders of these 18 employees and officers are concerned, at this stage, it can be said that except their association with the technical staff of 4 Sub Divisions, no further material whatsoever was available which could form the basis for their suspension on the ground that they were responsible in particular for not sending the records and therefore the suspension as has been ordered against these 18 employees and officers lacks application of mind and unless and until something in particular is pointed out against these employees i.e. Overseers, Assistant

Engineers and Additional Assistant Engineers, their suspension cannot be sustained in the eye of law. However, it may be mentioned that even with regard to four Deputy Executive Engineers who were posted at their respective Sub Divisions, Sahera, Morva, Veranpur and Godhra, letters have been sent on 15.6.1995 and thereafter by the Executive Engineer but it would have been better course had it been ascertained before passing the suspension order as to whether these letters had been received by the concerned Deputy Executive Engineers in time or not. The fact which has been pleaded by the learned Counsel for the petitioners, Mr. Oza that they were posted on the election duty and that some of them were on leave and therefore it would have been better if explanation of these four Deputy Executive Engineers would have been called for and at least an inquiry in the nature of preliminary inquiry would have been held by some responsible officer as to whether they had received the letters or not in time, as to whether they were on leave, how long they were on leave, how long they were on the election duty because in certain cases the failure to attend election duty may also entail punitive action. A proper course of action in conformity with principles of fairness and that of a good administration should have been followed which has not been followed in the instant case. It is rather surprising that no action has been taken against the concerned Executive Engineer or Superintending Engineer merely by saying that they had written letters for the production of the record as if in such a matter of vital importance they were absolved of their responsibility simply by sending the letters and making correspondence with the Deputy Executive Engineers of the 4 Sub Divisions. It is very well known that responsible technical staff like Engineers in this case are provided with the telephone facility by the Government, yet how the S.E. and Executive Engineer could be absolved of their responsibility simply on consideration that they had sent letters to the Deputy Executive Engineers. In such matter of importance it was the duty of the Executive Engineer to have contacted the respective Deputy Executive Engineers on telephone so as to make the records available. In case they were on election duty then also the Executive Engineer should have taken note of it seriously and should have taken a personal interest in the matter so as to contact the next responsible officers in the respective offices. The Deputy Executive Engineers could be contacted even at the places where they were discharging their election duties. It was only the question of procuring records from the Sub Divisions which were under the control of the Executive Engineer. The Executive Engineer is the

ultimate responsible person and one fails to understand as to how it can be said that the Executive Engineer and the Superintending Engineer are not even liable for their supervisory negligence. In such a serious case they are primarily responsible. Superintendent Engineer is primarily responsible for the entire Circle and the Executive Engineer is responsible for the Division. There are several Executive Engineers under the Superintendent Engineer and there are several Deputy Executive Engineers under the Executive Engineer. Therefore, in such matters when an action is sought to be taken against the entire technical staff, it cannot be understood that the officers at higher level who were drawing much more salary in comparison of the officers of the lower rank and who are functionaries with higher and greater responsibilities should be let scot-free. In such matters no one should remain contended by sending letters or wireless message. The aforesaid officers should have made extra effort to prove efficiency and while taking such drastic action of suspension the Government was also supposed to take proper steps at all levels so as to ascertain at least *prima facie* as to who are the officers who are directly concerned rather than taking a blind action against the entire staff which itself speaks of non-application of mind.

Even if the authority has any power under the Rules to pass a particular order, in case such power is exercised in an arbitrary manner, without application of mind, the orders passed without application of mind cannot be sustained in the eye of law.

In my opinion, here is a case in which the suspension orders against the 18 petitioners other than the 4 Deputy Executive Engineers have been passed without application of mind and the total lack of application of mind with regard to these 18 petitioners and their suspension is transparently visible.

So far as the 4 Deputy Executive Engineers are concerned, it appears that the letters were sent to them and therefore it appears that there was some material on which the action has been taken but it is also apparent with regard to these four Deputy Executive Engineers when it is alleged that Shri R.D. Patel that he was on election duty from 8/15/16/ 17.6.1995 and that Shri M.D. Solanki was on leave from 13.6.1995 to 21.6.1995, Shri L.A. Parmar was on leave on 8/15/21.6.1995 and Shri D.C. Soni was on leave on 15/16/21.6.1995 that full facts were not collected or noted. These facts should also have been taken into consideration and it should have been

known as to why they did not act upon the letters which were sent by the Executive Engineers to them and only after making a sort of preliminary inquiry in this regard, proper orders should have been passed but in view of Executive Engineer's letter dated 27.6.1995 the four Deputy Executive Engineers concerned cannot be given a clean chit, unless they are able to explain and rebut their inaction, indifference or negligence deliberate or otherwise. In the facts and circumstances of the case, the suspension orders with regard to 18 petitioners other than four Deputy Executive Engineers are hereby quashed and set aside. So far as four Deputy Executive Engineers are concerned, it is directed that the suspension orders which have been passed with regard to them may remain in force for a period of one month and during this period of one month proper preliminary inquiry be held as to whether the letters sent by the Executive Engineer had been duly received by them in time and if the same had been received in time what was the reason for them not to act upon the same, for how many days they were on election duties or on leave etc. and after holding proper preliminary inquiry by the responsible officer of the Government as may be chosen by the concerned authority, if it is found that there is any *prima facie* case against them then only the suspension against them shall continue otherwise subject to the result of this preliminary inquiry suspension order against these officers shall cease to be operative with the expiry of 30 days from today. Simultaneously it will be open for the respondents to consider any element of misconduct in particular against any of the 18 petitioners whose petitions are allowed and in case any allegation of misconduct *prima facie* is found against all or any of them and after application of mind and holding a proper preliminary inquiry if any *prima facie* case is there against any of the 18 petitioners in particular, it will be open for the respondents to pass appropriate orders in accordance with law and the relevant Rules on the basis of such preliminary inquiry. It is also made clear that while holding this preliminary inquiry if it is found that any officer other than these 22 officers is also involved and the matters have been deliberately delayed at the instance of any employee or officer including the concerned Executive Engineer and Superintendent Engineer, the Government may also proceed against them in accordance with law and Rules. 18 Petitions of the petitioners other than four Deputy Executive Engineers are therefore allowed and the petitions of four Deputy Executive Engineers are decided with the directions as given with regard to them hereinabove. Rule is made absolute accordingly in each of these 22 petitions. No order as

to costs. Direct service is permitted.